

Message Text

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FM SECSTATE WASHDC
TO HON EDWARD E JOHNSTON
HIGH COMMISSIONER OF THE TRUST TERRITORY
OF THE PACIFIC ISLANDS
SAIPAN MARIANA ISLANDS 96950

UNCLAS STATE 148332

E.O. 11652: N/A
TAGS: PGOV, TQ
SUBJ: SUBPOENA OF YAMADA AND NEAS

THIS IS A FOLLOW UP TO TEL CONV WITH DHC COLEMAN REGARDING THE SUBPOENAING OF YAMADA AND NEAS, BY THE JOINT COMMITTEE ON FUTURE STATUS. AFTER CONSULTATION WITH THE SOLICITOR'S OFFICE, WE SUBMIT THE FOLLOWING:

1. IN OUR OPINION THE CONGRESS OF MICRONESIA DOES HAVE SUBPOENA POWER OVER THE PERSONNEL HERE INVOLVED. SECRETARIAL ORDER NO. 2918, AS AMENDED, DELIMITS THE EXTENT AND NATURE OF THE AUTHORITY OF THE GOVERNMENT OF THE TTPI. IT AUTHORIZES AND ESTABLISHES THREE SEPARATE BRANCHES OF GOVERNMENT, NAMELY, THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL. PART III OF THAT ORDER RELATES TO THE LEGISLATIVE AUTHORITY OF THE CONGRESS OF MICRONESIA. SECTION 16(I), PART III, PROVIDES IN PART THAT THE CONGRESS OF MICRONESIA SHALL HAVE THE POWER TO INSTITUTE AND CONDUCT INVESTIGATIONS, ISSUE SUBPOENAS TO WITNESS AND OTHER PARTIES CONCERNED, AND ADMINISTER OATHS. WE FIND NOTHING IN THE ORDER OR IN THE IMPLEMENTING TTPI LAWS (2 TTC 251 ET SEQ., AND P.L. 5-36, APRIL 5, 1973) WHICH EXCLUDES THESE PERSONNEL FROM THE APPLICABILITY OF THE PERTINENT LAWS. FOR A COMMITTEE UNCLASSIFIED

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OF THE CONGRESS OF MICRONESIA TO HAVE SUBPOENA AUTHORITY OVER

THE PERSONNEL HERE INVOLVED WE MUST ASSUME THAT THE COMMITTEE HAS BEEN ESTABLISHED PURSUANT TO THE LAWS OF THE TTPI, THAT IT IS PROCEEDING WITHIN THE SCOPE OF ITS AUTHORITY AND IN ACCORDANCE WITH LOCAL LAW AND RULES OF THE CONGRESS OF MICRONESIA AND ITS OWN RULES. IF THE CRITERIA ARE MET AND THE SUBPOENAS PROPERLY PREPARED AND SERVED, THE HIGH COMMISSIONER OR HIS STAFF, AT HIS DIRECTION MAY DECLINE TO RESPOND TO THE SUBPOENA IF THE HIGH COMMISSIONER DETERMINES THAT DISCLOSURE OF THE INFORMATION SOUGHT IS NOT IN THE PUBLIC INTEREST. THIS IS AN EXCHANGE OF EXECUTIVE PRIVILEGE. HOWEVER, THIS IS DONE AT THE RISK OF COURT ACTION, NAMELY, CONTEMPT. EVEN SO, COURTS RECOGNIZE AND RESPECT THIS PRIVILEGE SINCE IT FLOWS FROM THE CONCEPT OF A SEPARATION OF POWERS OF THE THREE BRANCHES OF GOVERNMENT. KILBOURN V. THOMPSON, 103 U.S. 168; APPEAL OF HARTRANFT, 85 PA. 433; COMMITTEE ON RESOURCES AND DEVELOPMENT V. BOWLES, 5. T.T.R. 577.

2. IN DETERMINING WHETHER EXECUTIVE PRIVILEGE SHOULD BE EXERCISED RELATING TO AN OFFICIAL DOCUMENT, SUCH AS THAT HERE, ARGUMENT SHOULD BE MADE AGAINST DISCLOSURE BECAUSE (1) THE PAPER CONSISTS OF OR INCLUDES INCOMPLETE MATERIAL, IT IS A WORKING PAPER AND PREMATURE RELEASE COULD CONFUSE THE PUBLIC, AND (2) THE PAPER IS AN INTEROFFICE OR INTRADEPARTMENTAL MEMORANDUM WHICH DOES NOT REPRESENT A FINAL OFFICIAL POSITION.

3. IN REGARD TO A CONTEMPT ACTION, WE ARE OF THE OPINION THAT THE TTPI COURT HAS JURISDICTION UNDER THE PROVISIONS OF ITS CODE. AT THE COURT STAGE THE MATTER BECOMES JUDICIAL AND NOT LEGISLATIVE. THEREFORE THE USUAL STANDARDS OF CRIMINAL LAW MUST BE OBSERVED, INCLUDING PROPER ALLEGATION AND PROOF OF ALL THE ESSENTIAL ELEMENTS OF THE OFFENSE. GOJACK V. UNITED STATES, 384 U.S. 702 (1965). IN THIS REGARD WE WOULD INVITE YOUR ATTENTION TO THE RULES OF EVIDENCE SET FORTH IN THE PREFACE OF THE TTPI CODE. IN PARTICULAR, RULE 34 THEREOF DEFINES OFFICIAL INFORMATION AND THE BASIS FOR A WITNESS NOT DISCLOSING SUCH. WE CONSIDER THE PAPER HERE INVOLVED AS CONTAINING OFFICIAL INFORMATION AS THE TERM IS DEFINED IN RULE 34. ALSO, THE WITNESS SHOULD REQUEST THIS PRIVILEGE BECAUSE DISCLOSURE OF THE INFORMATION WILL BE HARMFUL TO THE GOVERNMENT, THAT IS, IT IS A WORKING UNCLASSIFIED

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CARPENTER SENDS. ROGERS

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